

K. Maconochie (A.) 1245. h
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DECEMBER 16. 1794.)

CONDES: Cashiers of Royal Bank,

Against

Dunlop, Houston, Gammill, & Co.

John Anderson, W.S. Agent.

CONDESCENDENCE

FOR

**The CASHIERS of the Branch of the ROYAL BANK
at Glasgow, Pursuers;**

AGAINST

**Mess. DUNLOP, HOUSTOUN, GAMMILL, and Company,
Bankers in Greenock, Defenders.**

AT moving a petition for the pursuers upon the 9th instant, reclaiming against an interlocutor of the Court, in the question between them and the above defenders, your Lordships were pleased to pronounce the following deliverance:

Dec. 9. 1794

‘ The Lords having heard this petition, they, before answer, ordain the petitioners to give in a printed condescendence of the facts they aver and offer to prove in support of the points stated in the petition, to be printed and put into the boxes on Thursday next, under an amand of 40s.’

In obedience to this interlocutor, the pursuers take the liberty, in the *first* place, of mentioning, that, as the defenders have laid much stress upon the circumstance of certain letters from Mr Simpson

Simpson to Mr Scott-Moncrieff, regarding the subject in question, having been destroyed, and insinuated that they might have been put out of the way, as unfavourable to the present action; so the pursuers, anxious that the Court may judge of the true reason why such letters were not preserved, would humbly move, that any of your Lordships number would take the trouble of inspecting, or any of your principal clerks should be appointed to inspect the letters from Mr Scott-Moncrieff to Mr Simpson, from December 1792 to March 1793 inclusive, and to report to the Court, whether the pursuers have not stated the fact justly, in saying that the corresponding communications to Mr Scott-Moncrieff must necessarily have contained a variety of matter of the most private and delicate nature, and which it might have been of very dangerous and prejudicial consequence to third parties to be disclosed; and being thus of so private and confidential a nature, that it must be esteemed an act of proper attention on the part of Mr Scott, the destroying them, after making himself master of the contents.

2dly, It has been alledged by the defenders, that the transaction in dispute had been secretly brought about with Mr Dunlop, and industriously concealed, in order that it might not reach the knowledge of any of the other defenders. Now, in addition to the evidence already in the cause, which the pursuers cannot help thinking is conclusive, that they acted upon the faith and belief that Mr Gammill, the acting partner and manager at Greenock, knew, and had approved of the transaction, they have reason to think they will be further able to prove, by the testimony of James Hopkirk merchant in Glasgow, that so far from any concealment having been observed, the pursuer Mr Scott-Moncrieff, previous to the arrangement of 1st January 1793 taking place, had a conversation on the subject with Mr Dunlop in the public coffee-room at Glasgow, in presence of Mr Hopkirk; and that Mr Dunlop gave Mr Scott to understand, that he was to write to, or consult with Mr Gammill, before coming to any settlement or agreement.

3dly, The pursuers offer to prove by their clerks at Glasgow, and the jottings taken by them at the time, that the sums at the debit of the account pursued on, of the 26th February, and 5th, 12th, and 19th March 1793, and which the defenders have alledged exceeded the differences on exchange at these periods, were nevertheless the precise results of these differences, and the sums put to the

the debit-side of the account consisted entirely of Greenock notes delivered to Mr Dunlop. This can be further confirmed by the evidence of Mr Auld, who was clerk to Mr Dunlop, by whom it can likewise be proved, that he informed Mr Gammill, since Mr Dunlop's failure, that he, Mr Dunlop, generally advised the Greenock Bank of the sums of their notes received at exchanges, very differently from what they really were, and much below the amount.

4thly, In opposition to what the defenders have maintained, of Mr Dunlop's transactions on behalf of the Company being of a limited and circumscribed nature, so as to imply nothing more than a mere agency for managing the exchanges; the pursuers are desirous of an opportunity to establish, from an examination of Mr Dunlop's accounts with the Company, and of the persons that were privy to his transactions, that he carried on business at Glasgow, by issuing the Company's notes, discounting bills, and otherwise, totally incompatible with the limited character of a mere agent for retiring notes upon exchange, but resembling an establishment for every purpose of a banking concern; and particularly the pursuers offer to prove, that whereas, during Mr Dunlop's management at Glasgow, the Greenock Bank notes, which found their way to the Royal Bank Branch alone, (independent of what might be carried to the other five Banking Companies at Glasgow), amounted *weekly* to 7, 8, or L. 10,000. Now since Mr Dunlop's failure, and a person has been appointed at Glasgow, by the defenders, for the sole purpose of settling their exchanges, the circulation of their notes has so far diminished, that there is not above 8 or L. 900 of the Greenock Company notes which come into the Royal Bank Branch in the week.

The pursuers therefore hope your Lordships will allow a proof of the facts and circumstances that have been stated, and grant diligence against witnesses and havers accordingly.

In respect whereof, &c.

ALLAN MACONOCHIE.

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the debit side of his account consisted entirely of Greenock notes delivered to Mr. Dunlop. This can be further confirmed by the evidence of Mr. Auld, who was clerk to Mr. Dunlop, by whom it can be proved that he informed Mr. Gammell, since Mr. Dunlop's banking establishment, Mr. Dunlop, generally received the Greenock Bank of the sums of their notes received at exchanges, very differently from what they really were, and much below the amount of the notes. In opposition to what the defendants have insisted of Mr. Dunlop's transactions on behalf of the Company being of a limited and circumscribed nature, so as to imply nothing more than a mere agency for managing the exchange, the pursuers are desirous of an opportunity to establish from an examination of Mr. Dunlop's accounts in the Company, and of the parties that were party to his transactions, that he carried on business at Glasgow, by using the Company's notes, discounting bills, and otherwise, totally incompatible with the limited character of a mere agent for issuing notes upon exchange, but resubmitting an establishment for every purpose of a banking concern; and particularly the pursuers offer to prove, that whereas, during Mr. Dunlop's management at Glasgow, the Greenock Bank notes, which found their way to the Royal Bank, through the hands of what might be carried to the other five banking Companies at Glasgow, amounted weekly to £8, or £10,000. Now since Mr. Dunlop's failure, and a partner has been appointed at Glasgow, by the defendants, for the sole purpose of issuing their exchange, the circulation of their notes has to far diminished, that there is not above 8 or 10,000 of the Greenock Company's notes which come into the Royal Bank Branch in the week. The pursuers therefore hope your Lordships will allow a proof of the facts and circumstances that have been stated, and grant diligence against witnesses and papers accordingly.

In respect whereof, &c.

ALLAN MACDONALD